

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ROXUL USA, INC.	:	CIVIL ACTION
	:	
v.	:	NO. 17-1258
	:	
ARMSTRONG WORLD INDUSTRIES, INC.	:	
	:	

ORDER

AND NOW, this 17th day of July 2018, upon considering Defendant's Motion to compel depositions of Plaintiff's long-identified custodians Thomas Kahler and Herman Voortman (ECF Doc. No. 62), Plaintiff's Opposition (ECF Doc. No. 63) and finding Plaintiff earlier identified these two individuals as custodians of information relating to claims or defenses regardless of their physical location, it is **ORDERED** the Defendant's Motion (ECF Doc. No. 62) is **GRANTED** and Defendant may depose Thomas Kahler and Herman Voortman as promptly as possible upon consent or proper service under Federal Rules 30(b)(6) or 45 or, if necessary, under the Hague Convention.¹



KEARNEY, J.

¹ As the depositions seek discoverable information from witnesses disclosed long ago and not governed by our May 14, 2018 Order (ECF Doc. No. 47), we trust experienced Delaware counsel can ensure a practical answer for the time and place for these depositions consistent with Fed.R.Civ.P. 1. The parties do not adequately describe the role of these witnesses as "custodians". We cannot discern their role. A "custodian" (as undefined here) is not necessarily a party's controlled agent. Defendant noticed the depositions under Fed.R.Civ.P. 30(b)(1) to occur in Wilmington or another mutually agreed location including in Europe. ECF Doc. No. 56, 57. As Defendant concedes these witnesses are not corporate designees, a subpoena is necessary to depose a non-party or person not controlled by a party to the action. An employer has no duty to produce a former employee not within its control. *See Gabriel v. Safeway, Inc.*, No. 10-2256, 2011 WL 5864033, at *5 (D.N.J. Nov. 21, 2011) (requiring plaintiff follow Rule 30 and Rule 45 to depose non-party former employee of defendant). Absent further facts, we decline opining on The Hague Convention. We trust counsel can work this out before those steps. If not, we will.